

LFC Requester:	Austin Davidson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 1/20/2024
Bill No: SJR 11

Sponsor: Ron Griggs and Greg Nibert
Short Title: Requirements for the Denial of Bail, CA

Agency Name and Code
Number: AOC 218
Person Writing Jason L. Clack
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Relates to HB 44 and HJR 3
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Joint Resolution 11 proposes to submit for approval in the next general election or at any special election prior to that date that may be called for that purpose, an amendment to Article 2, Section 13 of the New Mexico Constitution. The amendment would add paragraph enumerations to the constitutional provision. Under proposed paragraph A, the amendment would strike the term “capital” from the existing constitutional provision. The resolution would also amend paragraph C to remove the requirement for bail to be denied only by a court of record. It would also remove the limitation that only those charged with a felony could be denied bail. The amendment would still require the prosecuting authority to request a hearing to deny bail, but removes the clause “and proves,” replacing it with “the court finds.” The resolution also adds the requirement for the court to find that “the defendant is dangerous,” and that release conditions will “not” reasonably protect the safety of any other person or the community.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. The current Rules of Criminal Procedure for the New Mexico state courts give the district courts exclusive jurisdiction over decisions denying the right to bail. If this constitutional amendment is adopted, the Supreme Court would have to consider and adopt new procedural rules to allow courts of limited jurisdiction to make these decisions pursuant to the amended constitutional provision. This rule making process would take time and resources for the Court, which not able to be quantified at this time.

This amendment would allow courts of non-record to make decisions denying bail. This would require a shifting of resources to those courts, to hold the necessary hearings and make the necessary findings pursuant to the amended constitutional provision. While this may initially reduce workloads in the district courts, which now have exclusive authority over those decisions, it would not completely eliminate the burden on those courts, as these decisions by the lower courts would be subject to de novo review, as discussed further below. Therefore, this has the potential to increase workloads in the courts overall, by adding another layer of review for these decisions.

Removing the limitation that only people charged with felony offenses could be denied bail would also create the potential for a significant increase in denial of bail hearings. Since any criminal defendant could potentially be subject to denial of bail under the proposed revisions, many misdemeanor defendants could become the subject of these hearings. This would also

increase the potential for appeals to the district court (which are still given precedent over other matters), thus further increasing the potential fiscal impact on the courts.

SIGNIFICANT ISSUES

The right to bail is tied to due process, equal protection, and the presumption of innocence. In order to overcome these other rights afforded to criminal defendants, and deny the right to bail, there must be a compelling interest. Under the current constitutional provision, all defendants are presumed to have the right to bail, except for those who are charged with capital offenses, where the proof is evident and the presumption great. Others may be denied bail if they are charged with a felony offense and the prosecutor proves that they are danger to themselves or the community regardless of the conditions of release set by the court. By removing the limitation of the presumption of bail for all accused except those charged with capital offenses, this amendment erodes the right almost completely, because it would now allow a defendant charged with any offense, where the proof is evident or the presumption great, to be denied the presumption of bail.

The other significant issue, as mentioned above, is that this proposal would give courts of non-record the ability to deny bail. Decisions from these courts would be appealable, and the defendant would have the right to a de novo hearing in the district court. See § 35-1-1 (“The magistrate court is not a court of record.”); § 35-13-2(A) (“Appeals from the magistrate courts shall be tried de novo in the district court.”); NMSA 1978, § 35-15-10 (1959) (“All trials upon appeals by a defendant from the municipal court to the district court for violations of municipal ordinances shall be de novo . . .”). A de novo review by the district court, would require the district court to conduct the hearing anew. This would undo the burden shifting created by allowing the lower courts to make these decisions. As discussed above, this potential impact on court operations is compounded by the removal of the limitation of this provision to felony defendants.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. It is unknown if enactment of this bill would impact performance measures as they relate to judicial budgeting.

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts if the issues discussed above result in challenges to the validity and/or constitutionality of this law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 44 relates, as it deals with presumptions for pretrial detention and denial of bail. HJR 3 also proposes amendments to the same constitutional provision.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL
AMENDMENTS**